IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

WP(C).No. 6453 of 2007(R)

PETITIONER:

P.P. LAKSHMI, HEAD NURSE,
INSTITUTE OF MATERNAL AND CHILD HEALTH,
KOZHIKODE-8.

BY ADV. SRI.K.SHRIHARI RAO
SRI.P.N.ANOOP

RESPONDENTS:

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1. THE STATE OF KERALA, REPRESENTED BY
ITS SECRETARY, HEALTH AND FAMILY WELFARE
DEPARTMENT, SECRETARIAT, TRIVANDRUM.

2. THE DIRECTOR OF HEALTH SERVICES,
TRIVANDRUM.

3. THE DISTRICT MEDICAL OFFICER
OF HEALTH, KOZHIKODE.

BY GOVERNMENT PLEADER MR.BIJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28/02/2007, ALONG WITH WPC NO. 2970 OF 2006 & WPC NO.3187 OF 2006 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K.DENESAN, J.

W.P.(C) No.6453 of 2007 &
W.P.(C) Nos.2970 & 3187 of 2006

Dated, this the 28th day of February, 2007

JUDGMENT

This batch of writ petitions raises an identical question. Hence they are disposed of by this common judgment.

2. The petitioners availed leave without allowances coming either within the purview of Appendix XII(A) or Appendix XII(C) of the Kerala Service Rules. The former is availed for taking up employment abroad and the latter for going abroad to join the spouse. Petitioners availed such leave even before they completed the period of probation in the respective categories of posts. Hence their service conditions will have to be regulated in terms of Rule 5 contained in Appendix XII(A) and Appendix XII (C) of the Kerala Service Rules, as the case may be. It would appear that despite the provisions contained in the Kerala Service Rules the Government issued G.O.(P) No.616/2003/Fin. dated 19th November, 2003 saying that those who availed leave without allowances under Appendix XII(A) before completion of

probation in a grade need not forfeit their seniority and that their seniority will be protected. It was also stated in the above order that same treatment will be given to those who are covered by Appendix XII(B) and Appendix XII(C) of the Kerala Service Rules as well. Subsequently the Government on realising that Government order dated 19.11.2003 will not stand the test of law cancelled that order by G.O.(P) No.39/2005/Fin. dated 20.1.2005. Ext.P5 produced in W.P.(C) No.6453 of 2007 shows that Government has reviewed the order dated 19.11.2003 and the said order was cancelled with effect from 19.11.2003.

3. Challenging the above order of the Government cancelling its own previous order and claiming that the petitioners are entitled to count their original seniority on re-entry in service after availing leave without allowances, these writ petitions have been filed.

4. The scope and ambit of Rule 5 of Appendix XII(A) as also Appendix XII(C) have been considered by this Court in **Shaji Lukose** v. **State of Kerala and others** (I.L.R. 2007 (1) Kerala 543 = 2007 (1) KLT 679). The ratio of the decision is against the petitioners in these writ petitions. In the light of the legal

position discussed in the above judgment, the order passed by the Government cancelling the Government order dated 19.11.2003 is valid and sustainable. The writ petitions are therefore liable to be dismissed. Hence I do so.

K.K.DENESAN,
JUDGE

vns